

RIMAC & MARTIN

A Professional Corporation

JOSEPH M. RIMAC – CSBN 72381

WILLIAM REILLY – CSBN 177550

KEVIN G. GILL – CSBN 226819

1051 Divisadero Street

San Francisco, CA 94115

w_reilly@rimacmartin.com

Telephone: (415) 561-8440

Facsimile: (415) 561-8430

MCGUINN, HILLSMAN & PALEFSKY

CLIFF PALEFSKY (State Bar No. 77683)

KEITH EHRMAN (State Bar No. 106985)

535 Pacific Ave.

San Francisco, CA 94133

KAEMHP@aol.com

Telephone: (415) 421-9292

Facsimile: (415) 403-0202

Attorneys for Plaintiff

HUGO SLUIMER

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA**

E-FILING

HUGO SLUIMER,

Plaintiff,

v.

VERITY, INC., a corporation, and THE
VERITY INC. CHANGE IN CONTROL AND
SEVERANCE BENEFIT PLAN,

Defendants.

)
) **CASE NO. C 08 1220 SI**

)
) **PLAINTIFF'S RESPONSE TO**
) **DEFENDANTS' OBJECTIONS TO**
) **DECLARATION OF JACOB VAN DER**
) **PIJL IN SUPPORT OF PLAINTIFF'S**
) **MOTION FOR SUMMARY**
) **JUDGMENT, OR ALTERNATIVELY,**
) **FOR PARTIAL SUMMARY**
) **JUDGMENT**

) Date: July 18, 2008

) Time: 9:00 a.m.

) Ctrm: 10, 19th Floor

The Honorable Susan Illston

Plaintiff hereby responds to defendants' objections to the Declaration of Jacob van der
Pijl in support of plaintiff's motion for summary Judgment, as follows:

///

van der Pijl Declaration and Defendants' Objections	Plaintiff's Responses
<p>1. (3.) <i>On or about April 18, 2006, I filed a petition on Mr. Sluimer's behalf in the Dutch Court. Attached hereto as Exhibit A is a true and correct copy of that petition and the other documents that were presented to the Court by Mr. Sluimer and Verity in that action. (Pijl Dec. ii:8-10)</i></p> <p><u>Objection:</u></p> <p>Relevance. Fed. R. Evid. 402; <i>Abatie v. Alta Health & Life Ins. Co.</i>, 458 F.3d 955, 963 (9th Cir. 2006) ("Many circuits limit a district court to the administrative record when the court is reviewing a case on the merits for an abuse of discretion; consideration of new evidence is permitted only in conjunction with de novo review of a denial of benefits."); <i>Jebian v. Hewlett-Packard Co. Employee Benefits Org. Income Prot. Plan</i>, 349 F.3d 1098, 1110 (9th Cir.2003); <i>Urbania v. Cent. States, Se. & Sw. Areas Pension Fund</i>, 421 F.3d 580, 586 (7th Cir.2005) (noting that "[d]eferential review of an administrative decision means review on the administrative record" (internal quotation marks omitted)); <i>Zervos v. Verizon N.Y., Inc.</i>, 252 F.3d 163, 173 (2d Cir.2001) (noting that when review is for abuse of discretion, the record consists of the administrative record); <i>Elliott v. Sara Lee Corp.</i>, 190 F.3d 601, 608 & n. 6 (4th Cir.1999) (abuse of discretion review must be based on the evidence before the administrator); <i>Buckley v. Metro. Life</i>, 115 F.3d 936, 941 & n. 2 (11th Cir.1997) (per curiam) (holding that extra-record evidence, presented to the district court on review for abuse of discretion, was irrelevant).</p>	<p>The documents are highly relevant and should be included in the Court's scope of review. See INTRODUCTION in Response to Objections to Reilly Declaration.</p>

van der Pijl Declaration and Defendants' Objections	Plaintiff's Responses
<p>1. (3.) <i>On or about April 18, 2006, I filed a petition on Mr. Sluimer's behalf in the Dutch Court. Attached hereto as Exhibit A is a true and correct copy of that petition and the other documents that were presented to the Court by Mr. Sluimer and Verity in that action. (Pijl Dec. ii:8-10)</i></p> <p><u>Objection:</u></p> <p>Relevance. Fed. R. Evid. 402 [citations omitted. See Objection 1 for complete quote of objection.]</p>	<p>The documents are highly relevant and should be included in the Court's scope of review. See INTRODUCTION in Response to Objections to Reilly Declaration.</p>

Respectfully submitted,
RIMAC & MARTIN, P.C.

DATED: July 16, 2008

By: /s/ WILLIAM REILLY
WILLIAM REILLY
Attorneys for Plaintiff
HUGO SLUIMER